

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Request by State of North Dakota
for Waiver of the Commission's Rules to
deploy a 700 MHz Public Safety Interoperable
Broadband Network That Can Be Integrated
into the Public-Private Partnership

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WAIVER—EXPEDITED ACTION REQUESTED

Respectfully submitted by

David Sprynczynatyk
North Dakota Department of Emergency
Services

Date: July 17, 2009

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I. SUMMARY OF REQUEST

Pursuant to Section 1.925(b) of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ the State of North Dakota (“North Dakota”) respectfully requests a waiver of the Commission's rules to enable it to deploy a statewide, 4G-like, interoperable wireless broadband public safety network in the 700 MHz public safety allocation in North Dakota. The proposed network will provide the public safety community of North Dakota access to an advanced mobile broadband network that will enhance the safety and security of the citizens of North Dakota. North Dakota has worked with a Bismarck, North Dakota based company, Flow Mobile, to develop a viable plan to deploy and operate a network that address many pressing needs for public safety communications for the state of North Dakota. This waiver request seeks waivers from the Commission that would allow Flow Mobile to utilize the narrow band 769 - 775 MHz licensed to the state of North Dakota as well as the 763 - 768 MHz

¹ 47 C.F.R. § 1.925(b)

and 793-798 MHz band licensed to the Public Safety Spectrum Trust (PSST) – both of which remain fallow at this point in time – to deploy an interoperable emergency communications and joint use network providing mobile broadband services that would be based using open standards and compatible with LTE and other 700 MHz standards.

II. INTRODUCTION

A. THE STATE OF NORTH DAKOTA

North Dakota intends to introduce a game changing technology first in rural America that has the ability to carry high-speed multiple forms of traffic in a mobile environment, provide a low-cost technology with an easy migration path between unlicensed and licensed, and utilize an open standards approach.

The lack of wireless coverage in rural states provides consumers and public safety with few choices for broadband providers. North Dakota, a rural state with a population of only 642,200,² has only 292,054 high-speed lines.³ The few incumbent providers who do offer service do not reach all residents of North Dakota and have been unable to partner with the public safety sector to provide a high-quality, first rate interoperable network. North Dakota has less than 9 people per square mile, making it the 2nd least populated state in the Union. Providing ubiquitous mobile broadband coverage in North Dakota poses a significant challenge. Justifying the costs of a proprietary network for the less than 5,000 public safety emergency responders is untenable.

² U.S Decennial Census of 2000, North Dakota. Available at: http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=04000US38&_geoContext=01000US|04000US38&_street=&_county=&_cityTown=&_state=04000US38&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=040&_submenuId=factsheet_1&ds_name=ACS_2007_3YR_SAFF&_ci_nbr=null&qtr_name=null®=null%3Anull&_keyword=&_industry= (last viewed June 10, 2009).

³ Report on High-Speed Services for Internet Access: Status as of December 31, 2007, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, January 2009 at Table 9.

Further, the commercial mobile wireless networks in the state are continually plagued with many coverage gaps that are “dead zones”. Too often North Dakota residents have suffered the inability to call 9-1-1 because of coverage gaps.⁴

B. UNPREDICTABLE AND UNCERTAIN FUTURE OF THE D-BLOCK

Working with Flow Mobile, North Dakota is prepared to immediately deploy a mobile broadband network that will provide North Dakota emergency response agencies and personnel access to 4G-like mobile communications services. The uncertainty surrounding the D-Block auction imposes a significant delay in the ability of North Dakota first responders and its citizens to enjoy the benefits of the broadband emergency communications network that Flow Mobile is prepared to deploy. Without a waiver, North Dakota would be delayed in deploying this network and provide a much-needed public safety communications system to the residents of North Dakota. Given the outcome of the 700 MHz auction and the need to re-auction the D-Block, the uncertainty surrounding the future of public safety and the D-Block, North Dakotans cannot afford to wait any longer. With more than a year and a half passed since Auction 73, uncertainty is the major obstacle to deploying a statewide, interoperable public safety broadband network. This delay has occurred even after Congress first designated this spectrum for public safety use more than 12 years ago.⁵

As shown below, the requested waiver will serve the public interest by improving both emergency communication service for first responders and providing commercial and residential

⁴ “Hunting Accident Injures Boy From Fargo,” Grand Forks Herald, October 10, 2005, 02 B.

⁵ Balanced Budget Act of 1997, 111 STAT. 251, Public Law 105-33.

services without sacrificing of the policy goals the Commission sought to achieve in its 700 MHz rulemaking.⁶ North Dakota requests that the Commission act quickly on this waiver so first responders can better serve the citizens of North Dakota through the deployment of a mobile broadband network.

III. FLOW MOBILE IS READY TO OFFER A STATEWIDE, 4G-LIKE, INTEROPERABLE, PUBLIC SAFETY NETWORK IN NORTH DAKOTA

North Dakota seeks permission in two areas to deploy and operate a statewide, interoperable, dual use, public safety network to use 700 MHz base stations operating in the:

- 763-768 MHz and 793-798 MHz range, of which 10 MHz licensed to the PSST and
- 769 - 775 MHz in the narrowband licensed to the state of North Dakota.

Flow Mobile's platform will offer wireless high-speed data and video applications not currently available in North Dakota. The Flow Mobile solution is cost-effective, not requiring any capital investment by the state, only operational costs. The technology, employing a base transceiver station ("BTS") standard protocol approach, provides better coverage than EVDO service at a lower cost and fosters migration towards next generation 9-1-1 services. The proposed statewide network would meet the technical specifications proposed for a public safety commercial network and be capable of integration into any shared dual use network. Flow

⁶ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Second Report and Order, FCC Rcd 15289 (2007).

Mobile has specifically designed a network with the ability to accommodate all technologies, including LTE as advocated by NENA and APCO⁷, and to adapt to any Commission mandate.

On behalf of the State, the North Dakota Department of Emergency Services has granted Flow Mobile permission to use the narrowband 700 MHz public safety frequencies licensed to the State for early build out.⁸ In addition, the Governor of North Dakota has expressed his support for the network, stating that that “the State of North Dakota would benefit from a statewide mobile broadband emergency communications network that would be accessible to first responders and other public safety personnel and organizations.”⁹ The Governor’s letter confirms that Flow Mobile’s network would be compatible with the Public Safety Spectrum Trust’s (PSST) planned network. The Governor has coordinated efforts with the Information Technology Department, Division of Homeland Security, Division of State Radio Communications, the Highway Patrol, the Criminal Justice Information Sharing System, and the Department of Transportation. North Dakota has taken steps to improve its own emergency communications system by pledging its support for Flow Mobile, as the State can no longer afford to wait for the Commission to auction off the D-Block. In addition, the Flow Mobile plan has gained the support of the North and South Dakota chapters of NENA.¹⁰

⁷ Comments of APCO, GN Docket No. 09-51 (filed June 8, 2009) at 2; See also Comments of NENA, GN Docket No. 09-51 (filed June 8, 2009) at 8 (urging the Commission to ensure that any Commission action result in “a single standard and technology platform consistent for all users of the 700 MHz band”). See also APCO & NENA Endorse LTE as Technology Standard for the Development of a Nationwide Broadband Network, Press Release, June 9, 2009. Available at: http://www.apco911.org/new/news/nena_endorse_lte.php

⁸ Memorandum of Understanding between North Dakota Department of Emergency Services and Flow Mobile, July, 2009.

⁹ Letter from Governor John Hoeven to Bill Owens, Chairman of New EA, dba Flow Mobile, February 9, 2009.

¹⁰ February 20, 2009 letter from North and South Dakota NENA presidents to Bill Owens.

IV. FLOW MOBILE SUPPORTS THE PETITIONS FILED BY THE STATE OF NEW JERSEY, THE CITY OF BOSTON, AND THE CITY AND COUNTY OF SAN FRANCISCO

North Dakota supports the initiative of the State of New Jersey, the City of Boston, and the City and County of San Francisco to seek early deployment of an interoperable public safety network in their respective communities in the 700 MHz band and supports their efforts requesting approval for early network build-out.¹¹ These petitions illustrate that North Dakota is not the only entity working to deploy an interoperable public safety network in advance of a D-Block auction and urges the Commission to act favorable on all waivers to meet the needs of communities' needs for improved and advanced emergency communications. Public safety needs cannot afford to continue to await delays and indecision by the Commission and we urge the Commission to allow communities that are prepared to move forward to utilize fallow spectrum to address the needs of their communities, provided that such early deployment is done in a manner that will accommodate a national network that may be developed later.

V. CONCLUSION

For the reasons outlined above, North Dakota requests Commission approval allowing Flow Mobile to deploy a statewide, 4G-like, interoperable wireless network for both public safety and commercial use. As no other operator has been able to provide such service to date and with uncertainty surrounding Commission rules on the D Block, North Dakota urges the

¹¹ Petition by the State of New Jersey on the Commission's Rules Regarding a 700 MHz Nationwide Public Safety Interoperable Broadband Network, PS Docket No. 06-229, filed Apr. 3, 2009; Request by the City of Boston for Waiver of the Commission's Rules to Deploy a 700 MHz Public Safety Interoperable Broadband Network That Can Be Integrated into the Public-Private Partnership, PS Docket No. 06-229, filed Dec. 11, 2008; Request by the City and County of San Francisco, City of Oakland and City of San Jose for Waiver of the Commission's Rules to Allow Establishment of a 700 MHz Interoperable Mobile Public Safety Broadband Network, PS Docket No. 06-229, filed Mar. 24, 2009.

Commission to allow the residents of North Dakota this long overdue and much needed public service.

DATED: July 17, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Sprynczynatyk". The signature is fluid and cursive, with a large initial "D" and a stylized "S".

/s/David Sprynczynatyk
DAVID SPRYNCZYNATYK
North Dakota Department of
Emergency Services